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United States of America

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
v.  
  
RAMIRO CISNEROS-MONJE, ET AL.,  
  
Defendants.

CASE NO. 1:20-CR-00159-DAD-SKO

STIPULATION REGARDING EXCLUDABLE  
TIME PERIODS UNDER SPEEDY TRIAL ACT;  
ORDER

DATE: June 1, 2022  
TIME: 1:00 p.m.  
COURT: Hon. Sheila K. Oberto

**BACKGROUND**

This case is set for a status conference on June 1, 2022. On May 13, 2020, this Court issued General Order 618, which suspends all jury trials in the Eastern District of California “until further notice.” Under General Order 618, a judge “may exercise his or her authority to continue matters, excluding time under the Speedy Trial Act with reference to the court’s prior General Order 611 issued on March 17, 2020, . . . with additional findings to support the exclusion in the Judge’s discretion.” General Order 618, ¶ 6 (E.D. Cal. May 13, 2020). In addition, any judge “may order case-by-case exceptions” to General Order 618’s provisions “at the discretion of that Judge or upon the request of counsel, after consultation with counsel and the Clerk of the Court to the extent such an order will impact court staff and operations.” General Order 618, ¶ 7 (E.D. Cal. May 13, 2020). This and previous General Orders were entered to address public health concerns related to COVID-19.

Although the General Orders address the district-wide health concern, the Supreme Court has

1 emphasized that the Speedy Trial Act’s end-of-justice provision “counteract[s] substantive  
 2 openendedness with procedural strictness,” “demand[ing] on-the-record findings” in a particular case.  
 3 *Zedner v. United States*, 547 U.S. 489, 509 (2006). “[W]ithout on-the-record findings, there can be no  
 4 exclusion under” § 3161(h)(7)(A). *Id.* at 507. Moreover, any such failure cannot be harmless. *Id.* at  
 5 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a  
 6 judge ordering an ends-of-justice continuance must set forth explicit findings on the record “either orally  
 7 or in writing”).

8 Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory  
 9 and inexcusable—General Orders 611, 612, 617, and 618 require specific supplementation. Ends-of-  
 10 justice continuances are excludable only if “the judge granted such continuance on the basis of his  
 11 findings that the ends of justice served by taking such action outweigh the best interest of the public and  
 12 the defendant in a speedy trial.” 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is excludable  
 13 unless “the court sets forth, in the record of the case, either orally or in writing, its reason or finding that  
 14 the ends of justice served by the granting of such continuance outweigh the best interests of the public  
 15 and the defendant in a speedy trial.” *Id.*

16 The General Orders exclude delay in the “ends of justice.” 18 U.S.C. § 3161(h)(7) (Local Code  
 17 T4). Although the Speedy Trial Act does not directly address continuances stemming from pandemics,  
 18 natural disasters, or other emergencies, this Court has discretion to order a continuance in such  
 19 circumstances. For example, the Ninth Circuit affirmed a two-week ends-of-justice continuance  
 20 following Mt. St. Helens’ eruption. *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). The court  
 21 recognized that the eruption created “appreciable difficulty” for the trial to proceed. *Id.* at 767-69; *see*  
 22 *also United States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time  
 23 following the September 11, 2001, terrorist attacks and the resultant public emergency).

24 The coronavirus poses a similar, albeit more enduring, “appreciable difficulty” to the prompt  
 25 proceedings mandated by the statutory rules. Recently, the Ninth Circuit enumerated a “non-  
 26 exhaustive” list of seven factors it found to be “relevant” in considering ends-of-justice Speedy Trial Act  
 27 continuances “in the context of the COVID-19 pandemic.” *United States v. Olsen*, --- F.3d ---, 2021 WL  
 28 1589359 at \*7 (9th Cir. Apr. 23, 2021). That non-exhaustive list includes: (1) whether a defendant is

1 detained pending trial; (2) how long a defendant has been detained; (3) whether a defendant has invoked  
2 speedy trial rights since the case's inception; (4) whether a defendant, if detained, belongs to a  
3 population that is particularly susceptible to complications if infected with the virus; (5) the seriousness  
4 of the charges a defendant faces, and in particular whether the defendant is accused of violent crimes;  
5 (6) whether there is a reason to suspect recidivism if the charges against the defendant are dismissed;  
6 and (7) whether the district court has the ability to safely conduct a trial. *Id.*

7 In light of the foregoing, this Court should consider the following case-specific facts in finding  
8 excludable delay appropriate in this particular case under the ends-of-justice exception, § 3161(h)(7)  
9 (Local Code T4). If continued, this Court should designate a new date for the status conference. *United*  
10 *States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any pretrial continuance must be  
11 "specifically limited in time").

#### 12 STIPULATION

13 Plaintiff United States of America, by and through its counsel of record, and defendant, by and  
14 through defendant's counsel of record, hereby stipulate as follows:

15 1. By previous order, this matter was set for a status conference on June 1, 2022.

16 2. By this stipulation, defendant now moves to continue the status conference until  
17 September 21, 2022, and to exclude time between June 1, 2022, and September 21, 2022, under 18  
18 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code T4].

19 3. The parties agree and stipulate, and request that the Court find the following:

20 a) The government has represented that the discovery associated with this case is  
21 voluminous and contains over 30,000 pages, including, but not limited to: investigative reports,  
22 photographs and videos, hundreds of hours of recorded telephone conversations pursuant to  
23 wiretap order, cellular phone extractions, and large amounts of cellular telephone precise  
24 location data. All of this discovery has been either produced directly to counsel and/or made  
25 available for inspection and copying. The government has provided offers to plead.

26 b) Counsel for defendant desire additional time to consult with their clients, conduct  
27 further investigation, review the voluminous discovery, prepare for a possible trial, and to  
28 continue to explore a potential resolution of the case.

1 c) Counsel for defendant believes that failure to grant the above-requested  
2 continuance would deny him/her the reasonable time necessary for effective preparation, taking  
3 into account the exercise of due diligence.

4 d) The government does not object to the continuance.

5 e) In addition to the public health concerns cited by the General Orders and  
6 presented by the evolving COVID-19 pandemic, an ends-of-justice delay is particularly apt in  
7 this case given the serious nature of the charges the defendants face and because they have not  
8 invoked their speedy trial rights. Moreover, defendants Colin and Ramos are not detained  
9 pending trial.

10 f) Based on the above-stated findings, the ends of justice served by continuing the  
11 case as requested outweigh the interest of the public and the defendant in a trial within the  
12 original date prescribed by the Speedy Trial Act.

13 g) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161,  
14 et seq., within which trial must commence, the time period of June 1, 2022 to September 21,  
15 2022, inclusive, is deemed excludable pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code  
16 T4] because it results from a continuance granted by the Court at defendant's request on the basis  
17 of the Court's finding that the ends of justice served by taking such action outweigh the best  
18 interest of the public and the defendant in a speedy trial.

19 4. Nothing in this stipulation and order shall preclude a finding that other provisions of the  
20 Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial  
21 must commence.

22 IT IS SO STIPULATED.

23 Dated: May 19, 2022

PHILLIP A. TALBERT  
Acting United States Attorney

25 /s/ JUSTIN J. GILIO  
26 JUSTIN J. GILIO  
27 Assistant United States Attorney  
28

1 Dated: May 19, 2022

/s/ Roger Bonakdar

Roger Bonakdar  
Counsel for Defendant  
Ramiro Cisneros-Monje

4 Dated: May 19, 2022

/s/ Carol Ann Moses

Carol Ann Moses  
Counsel for Defendant  
Patricia Colin

7 Dated: May 19, 2022

/s/ Monica Bermudez

Monica Bermudez  
Counsel for Defendant  
Frank Ramos

10 **ORDER**

11 The parties shall be prepared to select a mutually agreeable trial date at the next  
12 status conference.  
13

14 IT IS SO ORDERED.

15 DATED: 5/23/2022

16 *Sheila K. Oberto*

17 THE HONORABLE SHEILA K. OBERTO  
18 UNITED STATES DISTRICT JUDGE  
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